

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

CARLOS A. RAMIREZ,
Plaintiff,

v.

CASEY L. KOZOLL,
Defendant.

No. 2:20-CV-0448-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action under 42 U.S.C. § 1983. Pending before the Court is Plaintiff's first amended complaint, ECF No. 7.¹

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a "... short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). This

¹ Plaintiff's first amended complaint was filed as of right pursuant to Federal Rule of Civil Procedure 15(a). Plaintiff later file a second amended complaint. See ECF No. 14. Because Plaintiff did not obtain prior leave of Court to file a second amended complaint, it will be stricken as improperly filed. The action proceeds on the first amended complaint.

1 means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d
2 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the
3 complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon which it
4 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because Plaintiff must allege
5 with at least some degree of particularity overt acts by specific defendants which support the
6 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
7 impossible for the Court to conduct the screening required by law when the allegations are vague
8 and conclusory.

9 10 **I. PLAINTIFF'S ALLEGATIONS**

11 Plaintiff names attorney Casey L. Kozoll as the only defendant. See ECF No. 7,
12 pg. 1. Plaintiff alleges that his underlying criminal conviction was based on a search warrant
13 executed without probable cause. See id. at 3. Plaintiff also appears to allege that Defendant
14 Kozoll, who was his attorney in the underlying criminal case, rendered ineffective assistance. See
15 id. at 4-5. Plaintiff seeks \$2.5 million in damages. See id. at 6.

16 17 **II. DISCUSSION**

18 When a state prisoner challenges the legality of his custody and the relief he seeks
19 is a determination that he is entitled to an earlier or immediate release, such a challenge is not
20 cognizable under 42 U.S.C. § 1983 and the prisoner's sole federal remedy is a petition for a writ
21 of habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973); see also Neal v. Shimoda,
22 131 F.3d 818, 824 (9th Cir. 1997); Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir.
23 1995) (per curiam). Thus, where a § 1983 action seeking monetary damages or declaratory relief
24 alleges constitutional violations which would necessarily imply the invalidity of the prisoner's
25 underlying conviction or sentence, or the result of a prison disciplinary hearing resulting in
26 imposition of a sanction affecting the overall length of confinement, such a claim is not
27 cognizable under § 1983 unless the conviction or sentence has first been invalidated on appeal, by
28 habeas petition, or through some similar proceeding. See Heck v. Humphrey, 512 U.S. 477, 483-

84 (1994) (concluding that § 1983 claim not cognizable because allegations were akin to malicious prosecution action which includes as an element a finding that the criminal proceeding was concluded in plaintiff's favor); Butterfield v. Bail, 120 F.3d 1023, 1024-25 (9th Cir. 1997) (concluding that § 1983 claim not cognizable because allegations of procedural defects were an attempt to challenge substantive result in parole hearing); cf. Neal, 131 F.3d at 824 (concluding that § 1983 claim was cognizable because challenge was to conditions for parole eligibility and not to any particular parole determination); cf. Wilkinson v. Dotson, 544 U.S. 74 (2005) (concluding that § 1983 action seeking changes in procedures for determining when an inmate is eligible for parole consideration not barred because changed procedures would hasten future parole consideration and not affect any earlier parole determination under the prior procedures).

Here, success on the merits of Plaintiff's claims relating to his underlying criminal case would necessarily imply the invalidity of any conviction resulting from that case. Plaintiff has not alleged that the underlying criminal conviction has been overturned or otherwise invalidated. It thus appears that Plaintiff's claims are not cognizable under 42 U.S.C. § 1983. To the extent Plaintiff can allege facts which would undermine this finding, Plaintiff will be provided leave to amend.

III. CONCLUSION

Because it is possible that the deficiencies identified in this order may be cured by amending the complaint, Plaintiff is entitled to leave to amend prior to dismissal of the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is informed that, as a general rule, an amended complaint supersedes the original complaint. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to amend, all claims alleged in the original complaint which are not alleged in the amended complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if Plaintiff amends the complaint, the Court cannot refer to the prior pleading in order to make Plaintiff's amended complaint complete. See Local Rule 220. An amended complaint must be complete in itself without reference to any prior pleading. See id.

1 If Plaintiff chooses to amend the complaint, Plaintiff must demonstrate how the
2 conditions complained of have resulted in a deprivation of Plaintiff's constitutional rights. See
3 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how
4 each named defendant is involved, and must set forth some affirmative link or connection
5 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d
6 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

7 Finally, Plaintiff is warned that failure to file an amended complaint within the
8 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at
9 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply
10 with Rule 8 may, in the Court's discretion, be dismissed with prejudice pursuant to Rule 41(b).
11 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. Plaintiff's first amended complaint is dismissed with leave to amend; and
- 14 2. Plaintiff shall file a second amended complaint within 30 days of the date
15 of service of this order.

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17 Dated: August 3, 2021



18 DENNIS M. COTA
19 UNITED STATES MAGISTRATE JUDGE
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